

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4 UNITED STATES OF AMERICA)
5) Case No. 1:14-cr-246
6 v.) Alexandria, Virginia
7 WILLIAM ANDREW CLARKE,) February 24, 2015
8 Defendant.) 9:30 a.m.
9)

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11 TRANSCRIPT OF TRIAL
12 (Volume II)

13 BEFORE THE HONORABLE CLAUDE M. HILTON

14 UNITED STATES DISTRICT JUDGE

15 AND A JURY

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19 APPEARANCES:

20 For the United States: Matthew J. Gardner, Esq.
21 Scott A. Claffee, Esq.
Special Agent Kristina Eyler

22 For the Defendant: Karin R. Porter, Esq.
23 David B. Benowitz, Esq.
Defendant William Andrew Clarke,
24 in person

25 Court Reporter: Tracy L. Westfall, RPR, CMRS, CCR
Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

P R O C E E D I N G S

(Jury deliberations begin at 9:30 a.m.; motion made on the record at 10:06 a.m. out of the presence of the jury.)

THE CLERK: Criminal case 14-246, *United States of America v. William Andrew Clarke*.

Will counsel please note your appearances for the record.

MR. GARDNER: Good morning, Your Honor. Matt Gardner and Scott Claffee for the United States. We're joined by Special Agent Kris Eyler.

MS. PORTER: Good morning, Your Honor. Karin Porter for Mr. Clarke, who is present.

THE COURT: Good morning. I understand you have a motion you want to raise?

MS. PORTER: Yes, Your Honor. We wanted to renew our Rule 29 motion to strike. It's a different set of facts then that the Court can consider after the government's case-in-chief.

We have presented evidence to refute certain facts that are set forth in the evidence that were our client's declarations; namely, that he was engaged in activity with this person by the name of Jeff and his two children. We presented evidence to refute that as true.

Your Honor, we would reiterate our motion that we made at the close of the government's evidence that there simply is

1 insufficient evidence for the case to proceed to go to the jury
2 because of the lack of evidence to support an attempt to cause
3 the assent of the fictitious minors to engage in sexual
4 activity, coupled with a substantial step through the use of the
5 Internet and phone.

6 So, Your Honor, based on that argument, we would ask
7 the Court to dismiss the indictment.

8 THE COURT: All right. Well, my ruling will be the
9 same as it was previously. I find that there's ample evidence
10 to go forward to the jury, and your Rule 29 motion will be
11 denied.

12 MS. PORTER: We just had one other housekeeping matter.
13 We would have a request, Your Honor, to provide the jury with
14 written instructions.

15 THE COURT: I don't do that. I instruct the jury
16 orally and do not instruct them in writing.

17 MS. PORTER: Thank you, Your Honor.

18 THE COURT: I'll see what they want before I leave.
19 Maybe they have a question.

20 We'll stand in recess till the jury returns.

21 (Recess taken at 10:08 a.m.)

22 * * *

23 (Question from the jury at 10:26 a.m.)

24 THE COURT: I have a note from the jury that says, "Can
25 we have a copy of the document that we have to affirm the charge

1 with three things to confirm?"

2 I'm not sure what sense that makes, but I think that --
3 I'll call them out and ask them, but I think they want me to
4 tell them again the three elements of the offense the government
5 has to prove.

6 I'll find out. If that's not the case, why, we'll deal
7 with it otherwise. We can bring the jury out.

8 (The jury enters at 10:27 a.m.)

9 THE COURT: You-all can have a seat.

10 I got your question. I'm not sure that I understand
11 it. There isn't any document. You have all of the documents.
12 As I told you, you have to decide this case based on the
13 evidence presented here in the courtroom and the instructions
14 that I give you. You have all of the documents that are
15 available.

16 But is your question you want me to tell you again the
17 three elements that the government must prove beyond a
18 reasonable doubt in this offense? Is that what you're asking?

19 THE FOREPERSON: Your Honor, several of us recalled a
20 reference to three things that had to be affirmed. It might
21 have been in your instructions to us.

22 THE COURT: I'll tell you again. There are three
23 elements of this offense that the government must prove beyond a
24 reasonable doubt.

25 First, that the defendant knowingly used a telephone,

1 computer, or any facility or means of interstate commerce, to
2 attempt to persuade or induce or entice or coerce, any person
3 under the age of 18 to engage in sexual activity;

4 Second, that the defendant believed that such
5 individual was less than 18 years of age; and

6 Third, that, had the sexual activity occurred, the
7 defendant would have been charged with a -- could have been
8 charged with a criminal offense under the laws of the
9 Commonwealth of Virginia.

10 THE FOREPERSON: Thank you, Your Honor. I believe
11 that's what we were looking for, Your Honor.

12 THE COURT: Thank you. And you-all may return and
13 continue your deliberations.

14 (The jury exits at 10:29 a.m.)

15 THE COURT: We'll stand in recess until the jury
16 returns.

17 (Recess taken at 10:30 a.m. and deliberations continue.)

18 * * *

19 THE COURT: Bring in the jury.

20 (The jury enters at 12:54 p.m.)

21 THE CLERK: Mr. Foreperson, has the jury reached its
22 verdict?

23 THE FOREPERSON: Yes, we have.

24 THE CLERK: Could you hand it to the court security
25 officer, please.

1 THE COURT: Okay.

2 THE CLERK: Will the defendant please stand and face
3 the jury.

4 In the matter of criminal case *United States of America*
5 *v. William Andrew Clarke*, we, the jury, find the defendant,
6 William Andrew Clarke, guilty as to Count 1 of the indictment;
7 signed Clifford Feuerbach {sic}, 2-24-2015.

8 Ladies and gentlemen, is this your unanimous verdict?
9 (Affirmative responses.)

10 THE COURT: Ladies and gentlemen, I thank you very much
11 for your service in this case. And you're excused until you're
12 next scheduled to be here. Thank you.

13 MS. PORTER: Your Honor, on behalf of the defendant, we
14 would ask that the jury members be polled.

15 THE COURT: All right. Poll the jury.

16 THE CLERK: Juror No. 30, Sarah Kay Nolan, is this your
17 verdict?

18 THE JUROR: Yes, it is.

19 THE CLERK: Juror No. 44, Sanaullah Skaikh, is this
20 your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror No. 38, James Reid, is this your
23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 34, Naomi Pizarro, is this your

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror No. 7, Bridget Cormack, is this your

4 verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror No. 12, Daniel Feuerbach, is this

7 your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror No. 17, Nancy Herring, is your

10 verdict?

11 THE JUROR: Yes, it is.

12 THE CLERK: Juror No. 39, Marina Richaud, is this your

13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror No. 20, Nathan Knotts, is this your

16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 11, Clifford Feldman, is this

19 your verdict?

20 THE JUROR: Yes, it is.

21 THE CLERK: Juror No. 31, Daniel Osei, is this your

22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror No. 53, Joanna Wadsworth, is this

25 your verdict?

1 THE JUROR: Yes, it is.

2 THE COURT: All right. Then you-all may be excused.
3 Thank you very much for your service.

4 (The jury exits at 12:57 p.m.)

5 THE COURT: Is May 22nd a good day for sentencing?

6 MR. GARDNER: That's fine with the government. Thank
7 you, Your Honor.

8 MS. PORTER: Yes. That's fine with the defense,
9 May 22.

10 THE COURT: Case will be continued to May the 22nd at
11 9 a.m. for sentencing. It's referred to the probation office
12 for preparation of a presentence report.

13 Bond will be continued. And we'll adjourn until
14 tomorrow morning at 9:30.

15 * * *

16 (Proceedings concluded at 12:58 p.m.)
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CERTIFICATION

I certify, this 9th day of April 2015, that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my ability.

/s/

Tracy Westfall, RPR, CMRS, CCR